

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1378 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
  2. To be referred to the Reporter or not? Yes.
  3. Whether Their Lordships wish to see the fair copy of the judgement? No.
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
  5. Whether it is to be circulated to the Civil Judge?
- No.

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GANGABEN

Versus

COMPETENT AUTHORITY & DY COLLECTOR (ULC)

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Appearance:

MR M.I. HAWA, for Petitioners  
MR CC BHALJA, ASST.GOVERNMENT PLEADER for Respondent  
No. 1  
NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/03/99

ORAL JUDGEMENT

This petition has been filed for quashing the judgment and order dated 6-9-1988 Annexure-B passed in Appeal-Surat No.137/85 dated 6-9-1988 u/s 33 of the Urban Land Ceiling Act, 1976 (hereinafter referred to as the ULC Act).

2. One Moolchand Govindbhai was holding the land in excess of the ceiling limits prescribed u/s 4 of the Act and he filled up the form No. 1 u/s 6 of the ULC Act declaring the property of Survey No. 78 admeasuring 9713 sq. mtr. which is an agricultural land as well as the properties which are residential houses bearing no. 218 and 219 admeasuring 125.42 sq. mtr. The declarant died on 19-5-1983 and the death certificate was produced before the competent authority to show the names of the heirs of deceased who are the petitioners no. 1, 3, 4 and 5 and they were brought on record and in the proceedings they were also joined as the parties. The declarant also produced a map duly certified by the Deputy Town Planner and Architect Engineer whereby the land in area of 3552.50 sq.mtr. for road margin, acquired for canal, village road and building control line was taken into Town Planning Scheme and that was deducted from the total area of the land and remaining land admeasuring 6160.50 sq. mtr. was liable to be determined for calculating the holding. On the basis of birth certificate and the documents on record the competent authority came to the conclusion that there are four heirs of deceased declarant and they all were major prior to coming the ULC Act into force. Hence, the competent authority treated the remaining land of four units and found 160 sq. mtr. land as excess by the order dated 2-9-1985.

3. U/s 33 of the ULC Act, before the Urban Land Tribunal and Secretary, Ahmedabad the appellants filed the Appeal No. 137/85 where the petitioner no. 3 being major daughter also claimed 1/5 share in the holding of the declarant and requested to give her 1/5 share in the holding of the deceased declarant. The Urban Land Ceiling Tribunal & Secretary, Revenue Department, State of Gujarat, dismissed the appeal by the order dated 6-9-1988 holding 8338.42 sq. mtr. as excess vacant land and treating the entire holding of the declarant as of one unit.

4. Heard learned counsel for the parties. Learned counsel for the petitioner contended that the State has not filed an appeal against the order of the competent

authority in respect of the land of four units, before the Tribunal. Even then, the Tribunal has exercised the powers conferred to the State Government u/s 34 of the ULC Act and reversed the findings arrived at by the competent authority though those findings were not challenged and the question as to whether the daughter was entitled for fifth unit in the holding of the declarant. The Tribunal has no jurisdiction to exercise the revisional jurisdiction conferred to the State Government. On the face of the record, the Tribunal has committed error and hence the order of the appellate authority is liable to be quashed.

5. I have given anxious thought to the submissions advanced by the learned counsel for the parties. The main controversy in this case is as to whether the appellate authority u/s 33 of the Act can exercise of suo motu powers of revision conferred to Government u/s 34 of the Act. The appellate authority for the purpose of appeal provided u/s 33 has been prescribed in II Schedule and that Schedule has been made in Rule 15-A (1) of the U.L.C. Rules, 1976 and the appellate authority has been described as the Urban Land Tribunal No. 1, 2, 3 or 4 and Ex. Officio Secretary to the Government of Gujarat, Revenue Department, while the revisional authority mentioned u/s 34 of the ULC Act is the State Government and the State Government has been given suo motu powers u/s 34 of the ULC Act. The appellate authority has not been conferred with exercise of suo motu powers u/s 33 of the Act Both the authorities i.e. appellate authority as well as revisional authority are separately defined and their jurisdiction and powers are different and both the powers are being exercised by separate authorities not by one and same authority. The appellate authority has assumed suo motu revisional powers conferred to the the State Government u/s 34 of the ULC Act and has observed in para 3 of the judgment which reads as under :

"In the premises aforesaid the impugned order of Competent Authority is not in accordance with law and Government guidelines. This Tribunal in Appeal under Section 33 can exercise powers of Suo Motu Revision under Section 34 and if order is illegal then tribunal can pass proper order in accordance with law."

7. The revisional powers which can be exercised as suo motu by the Government and where no appeal has been filed, has been conferred only to the State Government and those powers have not been conferred to appellate authority in Section 33 of the ULC Act. For the

revisional powers the State Government is only authorised to exercise suo motu for which no time limitation has been prescribed under the Statute to rectify an order of subordinate authority if the order is illegal and is not in accordance with law while 30 days time has been prescribed for filing appeal u/s 33 of the Act. But the appellate authority cannot exercise the powers of the State Government conferred u/s 34 of the ULC Act as the powers of the State Government have not been delegated to the appellate authority and both the powers u/s 33 as well as u/s 34 of the ULC Act are different powers and they are exercised by different bodies established by the Statute itself. Had it been case where both the powers could have been exercised by one and the same authority then it could have said that the powers u/s 34 were also included in the powers of the appellate authority and have also been conferred to the Tribunal. But by the Statute, the appellate powers have been conferred to the Tribunal while the revisional powers have been conferred to the State Government. The powers are different and those revisional powers cannot be exercised by the Tribunal in the inherent jurisdiction unless expressly conferred by the Statute as both the authorities are different one. The learned State Counsel could not show any statutory provision of law or authority that the appellate is also empowered to exercise suo motu revisional jurisdiction. On the basis of clear separation of powers by the Statute or provisions, the powers exercised by the appellate authority under the guise of powers u/s 34 of the State Government cannot be exercised. Thus, the order of the appellate authority is violative of statutory provisions of law. Learned State Counsel could not substantiate the order of the appellate authority and his submission is that section 33 and 34 of the Act are self explanatory.

8. In the present case, the Tribunal has exercised revisional powers of Section 34 of the ULC Act which were not available to it and hence the Tribunal has committed manifest error on the face of the record. As such, the petition deserves to be allowed and the impugned order is required to be quashed and set aside.

9. Accordingly, this petition is allowed and the impugned order dated 6-9-1988 Annexure-B to the petition is hereby quashed and set aside. Rule is discharged with no order as to costs.

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/JVSatwara/

